

(ii) The projected number of work years needed for implementing each set-aside activity;

(iii) The goals and objectives, outputs, and deliverables for each set-aside activity;

(iv) A schedule for completing activities under each set-aside activity;

(v) Identification and responsibilities of the agencies involved in implementing each set-aside activity, including activities proposed to be conducted by a third party; and

(vi) A description of the evaluation process to assess the success of work funded under each set-aside activity.

(4) *Amending workplans.* If a State changes the scope of work from what was originally described in its workplans, it must amend the workplans and submit them to EPA for approval.

(d) *Reserving set-aside funds.* (1) A State may reserve set-aside funds from a capitalization grant and expend them over a period of time, provided that the State identifies the amount of funds reserved in the IUP and describes the use of the funds in workplans approved by EPA. For the administration and technical assistance set-aside under § 35.3535(b), the State is only required to submit a workplan to reserve funds needed to provide technical assistance to public water systems.

(2) With the exception of the local assistance and other State programs set-aside under § 35.3535(e), a State may reserve the authority to take from future capitalization grants those set-aside funds that it has not included in workplans. The State must identify in the IUP the amount of authority reserved from a capitalization grant for future use.

(e) *Fund and set-aside account transfers.* (1) A State may transfer funds among set-aside categories described in § 35.3535(b) through (e) and among activities within these categories, provided that set-aside ceilings are not exceeded.

(2) A State may transfer funds between the Fund and set-asides, provided that set-aside ceilings are not exceeded. Set-aside funds may be transferred at any time to the Fund. If a State has taken payment for the set-aside funds to be transferred to the

Fund, it must make binding commitments for these funds within one year of the transfer. Monies intended for the Fund may be transferred to set-asides only if the State has not yet taken a payment that includes those funds to be transferred in accordance with the payment schedule negotiated with EPA.

(3) The capitalization grant agreement must be amended prior to any transfer among the set-aside categories or any transfer between the Fund and set-asides.

§ 35.3545 Capitalization grant agreement.

(a) *General.* A State must submit a capitalization grant application to EPA in order to receive a capitalization grant award. Approval of an application results in EPA and the State entering into a capitalization grant agreement which is the principal instrument by which the State commits to manage the DWSRF program in accordance with the requirements of section 1452 of the Act and this subpart.

(b) *Content.* In addition to the items listed in paragraphs (c) through (f) of this section, the capitalization grant agreement must contain or incorporate by reference the Application for Federal Assistance (EPA Form 424) and other related forms, IUP, negotiated payment schedule, State environmental review process (SERP), demonstrations of the specific capitalization grant agreement requirements listed in § 35.3550, and other documentation required by the Regional Administrator (RA). The capitalization grant agreement must also define the types of performance measures, reporting requirements, and oversight responsibilities that will be required to determine compliance with section 1452 of the Act.

(c) *Operating agreement.* At the option of a State, the framework and procedures of the DWSRF program that are not expected to change annually may be described in an Operating Agreement. The Operating Agreement may be amended if the State negotiates the changes with EPA.

(d) *Attorney General certification.* With the capitalization grant application,

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the State's Attorney General, or someone designated by the Attorney General, must sign or concur in a certification that:

(1) The authority establishing the DWSRF program and the powers it confers are consistent with State law;

(2) The State may legally bind itself to the proposed terms of the capitalization grant agreement; and

(3) An agency of the State is authorized to enter into capitalization grant agreements with EPA, accept capitalization grant awards made under section 1452 of the Act, and otherwise manage the Fund in accordance with the requirements and objectives of the Act and this subpart.

(e) *Roles and responsibilities of agencies.* If more than one State agency participates in the implementation of the DWSRF program, the State must describe the roles and responsibilities of each agency in the capitalization grant application and include a Memorandum of Understanding or interagency agreement describing these roles and responsibilities.

(f) *Process for evaluating capability and compliance.* A State must include in the capitalization grant application a description of the following:

(1) The process it will use to assess the technical, financial, and managerial capability of all systems requesting assistance to ensure that the systems are in compliance with the requirements of the Act.

(2) If a State provides assistance to systems that lack technical, financial, and managerial capability, the process it will use to ensure that the systems undertake feasible and appropriate changes in operations to comply with the requirements of the Act over the long-term.

(3) If a State provides assistance to systems in significant noncompliance with any national primary drinking water regulation or variance, the process it will use to ensure that the systems return to compliance.

§ 35.3550 Specific capitalization grant agreement requirements.

(a) *General.* A State must agree to comply with this subpart, the general grant regulations at 40 CFR part 31, and specific conditions of the grant. A

State must also agree to the following requirements and, in some cases, provide documentation as part of the capitalization grant application.

(b) *Comply with State statutes and regulations.* A State must agree to comply with all State statutes and regulations that are applicable to DWSRF program funds including capitalization grant funds, State match, interest earnings, net bond proceeds, repayments, and funds used for set-aside activities.

(c) *Demonstrate technical capability.* A State must agree to provide documentation demonstrating that it has adequate personnel and resources to establish and manage the DWSRF program.

(d) *Accept payments.* A State must agree to accept capitalization grant payments in accordance with a payment schedule negotiated between EPA and the State.

(e) *Make binding commitments.* A State must agree to enter into binding commitments with assistance recipients to provide assistance from the Fund.

(1) Binding commitments must be made in an amount equal to the amount of each capitalization grant payment and accompanying State match that is deposited into the Fund and must be made within one year after the receipt of each grant payment.

(2) A State may make binding commitments for more than the required amount and credit the excess towards the binding commitment requirements of subsequent grant payments.

(3) If a State is concerned about its ability to comply with the binding commitment requirement, it must notify the RA and propose a revised payment schedule for future grant payments.

(f) *Deposit of funds.* A State must agree to promptly deposit DWSRF program funds into appropriate accounts.

(1) A State must agree to deposit the portion of the capitalization grant to be used for projects into the Fund.

(2) A State must agree to maintain separate and identifiable accounts for the portion of the capitalization grant to be used for set-aside activities.

(3) A State must agree to deposit net bond proceeds, interest earnings, and repayments into the Fund.